

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs December 18, 2007

CHARLES D. JOHNSON v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Morgan County
No. 9352 E. Eugene Eblen, Judge

No. E2007-02018-CCA-R3-HC -Filed April 28, 2008

Petitioner, Charles D. Johnson, appeals the trial court's summary dismissal of his petition for writ of habeas corpus. After a thorough review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, and J. C. McLIN, JJ., joined.

Charles D. Johnson, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; and Scott McCluen, District Attorney General, for the appellee, the State of Tennessee.

OPINION

Petitioner entered pleas of guilty to first degree felony murder and especially aggravated robbery on February 18, 1998, in the Jackson County Criminal Court. Petitioner was sentenced to life imprisonment without the possibility of parole for his murder conviction and to twenty-five years for his especially aggravated robbery sentence. The trial court ordered Petitioner to serve his sentences consecutively for an effective sentence of life without the possibility of parole plus twenty-five years. Copies of the two judgments of conviction for these offenses were filed with the petition.

In this his second *pro se* petition for habeas corpus relief, Petitioner alleges that his convictions are void because the State has failed to produce any records in support of his judgments of conviction. Petitioner submits that "without said record the judgment itself is a nullity."

The right to habeas corpus relief is available "only when 'it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered' that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired." *Summers v. State*, 212 S.W.3d 251, 255 (Tenn.

2007) (quoting *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993)). In contrast to a post-conviction petition, a habeas corpus petition is used to challenge void and not merely voidable judgments. *Summers*, 212 S.W.3d at 255-56. A voidable judgment is one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity. *Id.* at 256; *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998). A void judgment “is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment.” *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999); *Dykes*, 978 S.W.2d at 529.

A petitioner bears the burden of proving a void judgment or illegal confinement by a preponderance of the evidence. *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). A trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of counsel and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *See Summers*, 212 S.W.3d at 260; *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

The determination of whether habeas corpus relief should be granted is a question of law. *Summers*, 212 S.W.3d at 255; *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Therefore, our review is *de novo* with no presumption of correctness given to the findings and conclusions of the lower court. *Summers*, 212 S.W.3d at 255; *State v. Livingston*, 197 S.W.3d 710, 712 (Tenn. 2006).

According to his habeas corpus petition, Petitioner had previously filed a “Motion for Order Directing Production of Documents” in the Jackson County Criminal Court, and a “Motion for Production of Documents” in the United States District Court for the Middle District of Tennessee. Petitioner states in his petition that the Sixth Circuit Court of Appeal remanded “for exhaustion of state remedies.” Neither of these pleadings, however, are included in the record. In his petition, Petitioner states that his first petition for habeas corpus relief was “withdrawn without prejudice to the refiling of same” on May 21, 2007, but Petitioner did not include a copy of this petition in the record. The trial court’s summary dismissal of his second habeas corpus petition is the subject of this appeal.

The State argues that the trial court properly dismissed Petitioner’s petition for habeas corpus relief because he failed to follow the procedural requirements for habeas corpus relief. The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers*, 212 S.W.3d at 260; *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. The formal requirements for an application or petition for writ of habeas corpus are found at T.C.A. § 29-21-107:

(a) Application for the writ shall be made by petition, signed by either the party for whose benefit it is intended, or some person on the petitioner’s behalf, and verified by affidavit.

(b) The petition shall state:

- (1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and if unknown, describing the person with as much particularity as practicable;
- (2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;
- (3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and
- (4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings there shall be produced, or satisfactory reasons should be given for the failure to do so.

T.C.A. § 29-21-107. "A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements. . . ." *Summers*, 212 S.W.3d at 260; *Hickman*, 153 S.W.3d at 21.

We note that the trial court's order denying habeas corpus relief states only that the trial court denied relief because "the petition is not well-taken." See *Hickman*, 153 S.W.3d at 21 (observing that if the trial court chooses "to resolve the petition on the merits, without concern for procedural deficiencies or for the opportunity to correct such deficiencies," an appellate court should review the reasons relied upon by the lower court). However, even though the order does not clearly state which procedural grounds were relied upon to dismiss the petition, it is clear that Petitioner has not stated a claim for which habeas corpus relief is available.

The record gives no indication of the grounds upon which Petitioner first requested habeas corpus relief. In his second habeas corpus petition, Petitioner asserts only that his judgments of convictions are void because there are, according to Petitioner, no supporting records other than uncertified copies of his judgments of conviction. It appears that Petitioner asserts that the indictments, papers regarding the plea agreement, and transcripts of court proceedings are unavailable. It is not entirely clear from either his brief or his reply brief, whether the records are lost or missing, or, if not, why he was not provided copies other than his allegations of what unnamed "agents" informed Petitioner. We observe, however, that this Court has repeatedly held "that a prisoner has no statutory or constitutional right to have the state furnish transcripts for him to utilize for the purpose of a fishing expedition to explore possible avenues of post-conviction or habeas corpus relief." *State v. Watts*, 670 S.W.2d 246, 247 -249 (Tenn. Crim. App. 1984). We

acknowledge also that the copies of the judgments in the record are uncertified but point out that Petitioner does not challenge the fact that he was convicted of first degree felony murder and especially aggravated kidnapping in the Jackson County Criminal Court. Moreover, we are unable to determine if Petitioner requested the clerk to provide him with certified copies of the judgments.

Nonetheless, the grounds upon which habeas corpus relief may be granted are limited in nature and scope. In his second petition for habeas corpus relief, Petitioner does not contend that the convicting court was without jurisdiction or authority to sentence him, or that his sentence of imprisonment has expired.

We find nothing appearing on the face of the judgments to indicate that the sentencing court lacked the statutory authority or jurisdiction to render Petitioner's judgments. *See Dykes*, 978 S.W.2d at 529 (citing *Archer*, 851 S.W.2d at 161). Based on the foregoing, we conclude that the trial court did not err in summarily dismissing Petitioner's petition for habeas corpus relief. Petitioner is not entitled to relief on this issue.

CONCLUSION

After review, we affirm the judgment of the trial court.

THOMAS T. WOODALL, JUDGE